

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 989 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RASIKLAL KANJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

Mr. S.R.Divetia, Addl. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE H.L.GOKHALE

Date of decision: 22/01/97

ORAL JUDGEMENT

The appellant was the accused of Sessions case no. 41 of 1987 and was tried for the offence under section 302 of the Indian Penal Code by the learned Additional Sessions Judge of Rajkot at Morbi. By his judgment dated 17.10.1988, the learned trial Judge convicted the accused for the said offence as well as for

the offence under section 135 of the Bombay Police Act. For the first offence, RI for life was awarded and a fine of Rs.500/- and for non-payment of the fine, the accused was to undergo RI for one month. For the offence under section 135, one month's SI was awarded and a fine of Rs. 100/- was imposed and in default, he was to undergo SI for one week. The substantive sentence has been ordered to run concurrently.

2. The incident happened on 2.9.87 between 4.00 p.m. to 4.15 p.m. on a road leading to village Ravapara from Morbi town. The deceased Valjibhai Jivabhai was going on his bicycle towards village Ravapara and after him, was coming the accused on his own bicycle. As they came near to a Tiles factory known as Sunder Mosaic Tiles Factory the incident is said to have happened. The manner in which it happened, it is described that the accused started verbal quarrel when both he and the accused were riding their respective bicycles. Soon thereafter, he inflicted a blow on the back side of the deceased with a curved knife referred to as Jamaiya. According to some evidence, the first blow was also given after both of them had alighted from the bicycles. After receiving the first blow, the deceased started running away. The accused chased him. The deceased fell down flat on his back side and the accused pinned his knife into abdominal regional of the deceased. Two eye witnesses Premjibhai Popatbhai and Ratilal Naranbhai who had seen the incident shouted and challenged the accused and he picked up his bicycle and ran away from the place.

3. A scooterist came there. His name was Sureshbhai. He was also from village Ravapara. The said two eye witnesses requested him to inform the complainant Bhagwanjibhai Jivabhai, brother of the deceased about the incident and two eye witnesses remained there. In response to this information, the complainant immediately came on the seen, gathered information from these two eye witnesses and lodged the complaint at 5.45 p.m. This was lodged at Morbi Taluka police station.

4. It has resulted into registration of the offence and investigation was soon taken up. Inquest panchnama, scene of offence panchnama etc. were drawn. In the meantime, a development took place, according to which, the accused went to Lati plot police chowky of Morbi city police station at 5.30 p.m. He came on his bicycle and his right hand was blood stained. He also took out a knife from the waist band of his Pyjama and he surrendered before the police. Name of this constable is

Kuberbhai p.w. 12 exh. 35. He takes the accused to Taluka police station at 6.00 p.m. The Investigating Officer coming back to the police station apprehends the accused and rest of the formalities are completed.

5. The aforesaid two eye witnesses, complainant etc. were examined and at the end of the trial, the accused came to be convicted and came to be awarded sentence as stated above.

6. About homicidal death of the deceased, there is no doubt at all. The eye witnesses have been exhaustively cross-examined naturally with a view to bring about improbability in their statements and also to make out a case of they being very convenient witnesses for the prosecution as siding with the complainant side which had admittedly some hostility with the accused. In fact, that hostility is said to be the motive behind the crime.

7. The hostility relates to the deceased trying to outrage the modesty of the mother of the accused about two years back from the date of the incident and chapter proceedings relating to this are on record.

8. The learned trial Judge on the basis of the material produced before him, has made comments about those two eye witnesses and has gone on record at page 21 of the judgment in para 32 running page 499 of the paper book that if these two eye witnesses were the only material to be relied upon by the prosecution, probably he would not have held the accused guilty beyond reasonable doubt. According to him, corroborative evidence in the form of the deposition of the said constable Kuberbhai Mohansing p.w. 12 exh. 35 as well as the evidence relating to the blood stains which were found on the hand of the accused. With regard to the blood stains on his hand, a swab was taken by the local Doctor of the Government hospital and had sent the swab for Forensic Science Laboratory analysis as per exhs. 24 and 25. Dr. P.H.Hirani p.w.7 is examined for this purpose at exh. 23.

9. In our opinion, it is this so called corroborative piece of evidence itself which has started us to doubt the whole prosecution case. If this is the prosecution case and that in fact, is the prosecution case, namely the accused had his right hand blood stained and that stains were noticed on his waist, palm and fingers, as deposed to by the Investigating Officer Mr.

Ranmalbhai Nathabhai Dayatar p.w.21 exh. 56. According to Kuberbhai, p.w.12, when the accused took out the knife from the waist band, according to prosecution, even the bicycle of the accused had blood stains. Forensic Science Laboratory determines the blood group of the sample taken from the alleged blood stains on the right hand of the accused, but the blood group could not be determined from the sample taken by swab from different parts of the bicycle of the accused.

10. It is difficult to understand how the bicycle got the blood stains. As per the prosecution case, it was lying much away from the place where the deceased came to be stabbed second time. If on the first occasion while riding the bicycle, blow is given, then also the bicycle of the accused could not have been blood stained.

11. The sources of blood for the bicycle of the accused to get stains would be the right hand of the accused alone. If it were otherwise, then the accused would not have received blood stains only on his right hand and there would be blood stains on other parts of his body. In this background, not finding blood stains on any of his clothes, Pyjama and shirt which he was wearing makes the entire story of blood stains on his right hand very doubtful, especially when blood stains from his hand could drip down to bicycle, his clothes would be first to come in the way and to receive blood stains before bicycle of the accused would receive it.

12. The next piece of evidence is the time factor as aptly described by the learned A.P.P. Constraint factors may now be listed. Police constable Kuberbhai has specifically stated in his deposition that the accused surrendered before him at 5.30 p.m. He has also specifically stated that at 6.00 p.m., the accused was brought to Taluka police station. FIR exh. 50 which is hand written runs into almost two pages and it has been written down at 5.45 p.m. As the narration is given by complainant Bhagwanjibhai Jivabhai, it came to be recorded. Therefore, it would have taken at least 10 to 15 minutes to complete the same because it runs into at least two full scape pages.

13. This is followed by action on the part of the said PSI Shri Dayatar to inform the superior officer by a wireless message as this is a visitation offence and he further records the crime in the police station as per exh. 58 before leaving the police station for the scene of offence. The scene of offence from the Taluka police

station of Morbi is towards its west and at a distance of 4 kms. as set out in column no. 2 of exh. 57. According to PSI Dayatar, he left the police station by 6.00 p.m. This would mean that he completed the entire formality of complaint being taken down, offence being registered and superior officer being informed within that short span of 15 minutes. He had left the police station at 6.00 p.m. Scene of offence being at least 4 kms. away, one would have expected him to reach there by 6.15 p.m. However, the inquest report exh. 31 page 203 indicates that writing of the report commenced at 6.00 p.m. and was concluded at 6.30 p.m. It is a handwritten one and it is of the size of 1.1/2 full scape pages. For recording this, if 30 minutes are taken, where only description of the body and the injuries as noted by the panchas was to be recorded, the FIR exh. 57 running into almost two full-scape pages, one would expect to take more time.

14. This would make the entire story of the accused surrendering by 5.30 p.m. being taken to the police station by 6.00 p.m. etc. very much doubtful. If that story is accepted, apart from anything else, by the time the accused is brought to the police station, PSI Dayatar either was there or at least the complainant would have been there. But we are told that Kuberbhai had to wait there with the accused till return of PSI Dayatar which happened at about 8.00 p.m.

15. As if this is not enough, petrol book entry made by the said constable Kuberbhai Mohansing is admittedly made at the instance of PSI Dauyatar and in fact, he admits thast it was dictated in its entirety by the said PSI Dayatar. This entry is produced at exh. 36. During the cross-examination of this witness Kubersing, it has been brought out that the entry was in fact, prepared as dictated by the said PSI Dayatar, after statement of witness was recorded. This has also been the subject matter of comments at the hand of the learned trial Judge as per page 219 when he allowed production of this document.

16. In the background of the aforesaid time factor constraints, and non-existence of blood stains on the clothes of the accused, the entire story and even not seizing clothes of the accused for examination for blood stains by the prosecution, which would indicate, in turn that when the panchnama of arrest of the accused was drawn, the panchas did not find any marks on his clothes and this would indicate that the accused has been called for interrogation, no doubt on suspicion, but lateron the

prosecution case has come to develop on the aforesaid line.

17. According to testimony of Godavariben, mother of the accused, p.w. 18 exh. 48, the accused was very much at his house and police came to call him and was taken away by the police at 5.30 p.m. in the evening which appears to be, under the circumstances, more probable story than what the prosecution has tried to make out the case to be.

18. In the aforesaid background, the eye witness testimony of Premjibhai and Ratilal p.ws. 2 and 5 would become very shaky which even the learned trial Judge has considered to be not free from doubt. The entire structure thus placed by the prosecution under the totality of the circumstances is rendered very much doubtful and therefore, in our opinion, the order of conviction passed by the learned trial Judge cannot be sustained. So far as the eye witnesses are concerned, adding to the comment of the learned trial Judge, we may say that they remaining on the scene, not being interrogated by the police, their statements being recorded only at 11.00 p.m. in the night or thereabout and all other circumstances discussed by the learned trial Judge, in our opinion, are enough to hold in the manner as done above.

19. The net result therefore, is the appeal succeeds. The appeal is allowed. The order of conviction and sentence is set aside. The appellant is ordered to be set at liberty if not required for any other purpose.

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